

In the Dark Season Two: SCOTUS Update

This is Madeleine Baran, host of In the Dark. I'm coming to you late Friday night with a special update on some breaking news that happened just hours ago in the case of Curtis Flowers.

Friday afternoon, the U.S. Supreme Court announced on its website that it will take Curtis Flowers' case, that the Court will hear Curtis' appeal and will decide whether his conviction should be overturned. It's what lawyers call granting cert.

This decision by the Court to take Curtis' case is extraordinary. Every year the Supreme Court receives thousands of petitions, often as many seven or eight thousand.

And of that number, the Court only takes about a hundred or so. Often the Court takes cases it believes have national significance.

As soon as I found out that the Court had decided to take Curtis' case, I called one of Curtis' lawyers on this appeal: A public defender in Jackson, Mississippi named Alison Steiner.

Alison Steiner: *This is Alison.*

Madeleine Baran: *Alison, it's Madeleine Baran calling.*

Alison Steiner: *Oh well gee, you weren't the first person to call. We're very excited.*

Madeleine Baran: *I can imagine. Do you mind if I just record real briefly with you?*

Alison Steiner: *Sure.*

Madeleine Baran: *OK. So yeah. This just happened, so what did you think when you saw it?*

Alison: *I thought this is wonderful. It is a tremendous moment. Well, let's put it this way, I've been practicing law 43 years. This is only the second time this has happened to me in 43 years of law practice.*

Madeleine: *Wow. That this, that the U.S. Supreme Court has decided to actually hear a case that you brought up before it?*

Alison: *Yes, yeah.*

Madeleine Baran: *Have you told Curtis?*

Alison Steiner: *I have not been able to reach the —. The office that would let me call him has closed by the time we got this.*

Madeleine Baran: *Oh no.*

Alison Steiner: *I, I'm almost tempted to try to drive up to Parchman and try to break into the prison to tell him, but, yes.*

Madeleine: *Were you expecting this?*

Alison: *I was hoping for it.*

Madeleine: *But the court almost never grants cert. I mean it gets thousands of cases and grants almost none of them.*

Alison: *Yes, that is true, but I like to believe that as important as Curtis' case is to anybody who knows Curtis or knows the facts of what's happened in this case, I like to*

think that the United States Supreme Court is still very interested in making sure that the justice system that it is in charge of operates fairly and is not my view poisoned by racial discrimination.

Here's what Alison Steiner is talking about. The Court will look at a critical issue in Curtis' case. The issue of alleged racial discrimination by the District Attorney Doug Evans in jury selection.

Throughout Curtis Flowers' six trials, Curtis' lawyers have tried to convince the courts that Doug Evans has intentionally struck black people from the juries because of their race, in violation of the U.S. Constitution. And twice the defense succeeded in convincing a court of this. It happened in Curtis' second trial, and it happened in the appeal of Curtis' third trial.

But in his sixth trial, that's the latest one, in 2010, it was different. That jury was also almost all white. But when Curtis appealed that conviction, he lost. And the Mississippi Supreme Court ruled that in the sixth trial the D.A. Doug Evans did NOT strike black people because of their race.

So, Curtis appealed that decision to the U.S. Supreme Court, and the Supreme Court sent it back down to the Mississippi Supreme Court for reconsideration. But the MS Supreme Court didn't change its mind. The Court upheld the conviction. All of that happened over the past few years.

And after all of that, Curtis' lawyers had basically one more chance to appeal to the U.S. Supreme Court on this. They told the Court that the state Supreme Court in Mississippi was wrong to find that there was no intentional racial discrimination by the D.A. in Curtis' last trial.

In a friend of the court brief, the Magnolia Bar Association cited our analysis of jury selection throughout Doug Evans' entire tenure as D.A., the analysis that found that Doug Evans' D.A.'s office struck black people from juries at nearly 4 and a half times the rate it struck white people.

Alison Steiner: *The work you did I think is vastly important to this case. And at some point, we'll, we'll I hope to persuade someone that Curtis should not ever be tried, he should be —. This case should be reversed, and he should never be tried again.*

Alison Steiner told me that she thinks the fact that the Court took the case is a sign that they might rule in Curtis' favor and actually overturn his conviction.

Alison Steiner: *Well it is often said that the US Supreme Court does not take cases just to affirm what the court below did. We must be optimistic, and I think we have reason to be -- that this is a case that it would be very difficult for any, for this Court to brush aside. Unfortunately for Curtis this doesn't change anything. He goes to bed tonight on death row and he wakes up tomorrow morning on death row, because until relief is actually granted that's where he stays.*

I wanted to find out what the D.A. Doug Evans made of all this, so I called his office late this afternoon, but no one answered. I also reached out to the Mississippi Attorney General's Office, that's the office that is representing the state in the appeal. I wanted to find out if the Attorney General Jim Hood had anything he'd like to say about the Court's decision. A spokesperson got back to me and sent me an email saying, quote, "Pretrial publicity rules prevent us from commenting on ongoing cases."

I also decided to give Curtis Flowers' father Archie Flowers a call. I reached him at his house in Winona.

Madeleine Baran: *What do you think Curtis will make of it?*

Archie: *Ah he'll probably be happy. Yeah, I talked to him earlier*

Madeleine Baran: *How was he doing earlier?*

Archie: *He was doing fine, he didn't say nothing about it.*

Madeleine Baran: *Yeah it just happened. This is some big news.*

Archie: *All right, that's good. Lord gonna work it out. Yep. Good lord working. Yes, this might make me sleep better tonight.*

Madeleine Baran: *Makes you sleep better tonight?*

Archie: *Yeah.*

Madeleine Baran: *Yeah. All right well have a good rest of your night.*

Archie: *Okay you too.*

Madeleine Baran: *All right, take care.*

Archie: *You too.*

Madeleine Baran: *Thanks. Bye.*

Archie: *Good night.*

In the coming months the U.S. Supreme Court is expected to ask both sides, the defense and the State, to file written briefs. After that the justices could decide to schedule oral arguments in the case. Alison Steiner told me that she expects that the lead attorney for defense, attorney Sheri Lynn Johnson of the Cornell Death Penalty Project or another Cornell death penalty lawyer on the team would argue the case for the defense.

The Supreme Court will announce its decision in the case of Curtis Giovanni Flowers versus Mississippi no later than June of 2019.

We'll continue to keep you updated on the case. And we'll be releasing an update episode later this month where we answer your questions. If you have anything you want to ask us, leave us a message on our voicemail at 662-508-0646. Again, that's 662-508-0646

We spent a lot of time reporting on what Doug Evans and his assistants did in jury selection in the Curtis Flowers trials, and in all the trials his office has handled during his term as District Attorney. You can hear that reporting in episodes 7 and 8 of the podcast.

And more thing. Earlier this week we posted tens of thousands of pages of court documents that we used in our analysis of the D.A.'s jury strikes. You can find that on our website: IntheDarkPodcast.org. Again, that's IntheDarkPodcast.org.

In the Dark is reported and produced by me, Madeleine Baran, Senior Producer Samara Freemark, producer Natalie Jablonski, associate producer Rehman Tungekar, reporters Parker Yesko and Will Craft. In the Dark is edited by Catherine Winter. Web Editors are Dave Mann and Andy Kruse. The Editor-in-Chief of APM Reports is Chris Worthington.